

SECOND REGULAR SESSION

HOUSE BILL NO. 1716

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COX.

5725L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 67, RSMo, by adding thereto one new section relating to construction contract bidding standards for political subdivisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 67, RSMo, is amended by adding thereto one new section, to be known as section 67.314, to read as follows:

67.314. 1. The provisions of this section shall apply to contracts for construction awarded by political subdivisions of the state of Missouri and shall be known as the "Political Subdivision Construction Bidding Standards Act".

2. As used in this section, the following terms mean:

(1) "Contracts for construction", the construction or alteration of any building, structure, highway, bridge, street, viaduct, water or sewer line or system, pipeline, demolition, moving, or excavation connected therewith, and shall include the furnishing of surveying, construction engineering, planning or management services, or labor, material, or equipment, as required to perform work under the contract for construction. The direct purchase by a political subdivision of products or equipment from a vendor shall not be deemed a contract for construction. Neither shall a subcontract for labor, materials, or equipment, or such purchases by the person awarded a contract by the political subdivision or the contractor's subcontractors be deemed a contract for construction for purposes of this section;

(2) "Established local construction procurement policy", a policy and procedure for use in soliciting bids for multiple construction projects that has been officially adopted by the governing body of the political subdivision or established by the public works

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 director, engineer, or similar official authorized by the political subdivision to administer
19 the award of construction contracts;

20 (3) "Political subdivision", any city, town, village, county, or special purpose
21 district, including all units of local government organized and operating under the laws of
22 Missouri within local geographic areas wholly or partly within the state of Missouri, and
23 all boards, commissions, divisions, departments, officers, and agents of such political
24 subdivisions, in award of contracts for construction from public funds.

25 3. Nothing in this section shall be construed to require competitive bidding for the
26 procurement of equipment, parts, or operating systems, or the installation of such items,
27 when specifications for the procurement require a specific manufacturer to be compatible
28 with existing or new facilities at a power plant, wastewater or water treatment facility, or
29 other similar facility owned or operated by a political subdivision, provided that award of
30 a contract for such purchases and installation without competitive bidding is not otherwise
31 prohibited by law. Nothing in this section shall be construed to require the design or
32 engineering of any project, as the term "project" is defined in section 8.287, to be awarded
33 by competitive bidding if the contract for such services is under a separate contract from
34 a contract for construction and is awarded under sections 8.285 to 8.291, or to construction
35 management services governed by sections 8.675 to 8.687. Neither shall this section be
36 construed to apply to contracts awarded by the design/build method of project delivery,
37 if the political subdivision's procurement of design/build projects is otherwise authorized
38 by statute.

39 4. (1) To the extent a political subdivision is not subject to specific requirements
40 for advertising, soliciting, awarding, or rejecting bids for such projects by Missouri
41 statutes or rules, federal or state funding requirements, or an established local construction
42 procurement policy, the political subdivision shall comply with the minimum standards of
43 this subsection.

44 (2) If a political subdivision is not subject to a specific requirement for advertising
45 for bids or soliciting, awarding, or rejecting bids under Missouri statutes or rules, or
46 federal or state funding requirements, and if the political subdivision has not adopted an
47 established local construction procurement policy that is applicable to the specific political
48 subdivision regarding contracts for construction, the political subdivision shall comply
49 with the following provisions when soliciting bids and awarding construction contracts of
50 twenty-five thousand dollars or more:

51 (a) Contracts for construction shall be advertised in advance of the acceptance of
52 bids. If no provision of Missouri statutes or rules, or federal or state funding requirements,
53 or established local construction procurement policy requiring advertising otherwise

54 applies, bids shall be solicited by advertisement once a week for two consecutive weeks in
55 a newspaper of general circulation, qualified under chapter 493, located in a county where
56 the political subdivision is located. If there is no newspaper in the county qualified under
57 chapter 493, advertisements may be placed in a newspaper in an adjoining county. The
58 last insertion of the advertisement shall be not less than ten days before the date stated in
59 the advertisement for acceptance of bids. Project advertisements and bid solicitations shall
60 state the date and time of the deadline for the acceptance of bids, the place for submission
61 of bids, and shall provide for informing bidders of the date, time, and place where bids
62 shall be opened;

63 (b) If no provision of Missouri statute or rules, or federal or state funding
64 requirements, or established local construction procurement policy otherwise applies,
65 contracts for construction shall be awarded in compliance with this subdivision. The
66 contract shall be awarded to the lowest and best bidder submitting a bid which is
67 responsive to the contract as advertised by the political subdivision. The political
68 subdivision may reject the low bidder by declaring the bidder ineligible for contract award
69 based on the bidder's failure to provide a performance or payment bond as required by
70 section 107.170, the bidder's nonperformance on previous contracts, or for other reasons
71 specified as to the bidder's inability to adequately perform the contract. The reasons for
72 bid rejection or award of the contract to another bidder shall be stated in writing to the
73 low bidder within five business days of the rejection of the bid, if requested.

74 5. (1) If a political subdivision establishes a local construction procurement policy,
75 the provisions of the policy shall meet the standards of this subsection.

76 (2) An established local construction procurement policy complies with this section
77 if it provides for advertising of construction contracts in a manner reasonably likely to
78 inform potential bidders of the project on a timely basis, in addition to advertisement in
79 a newspaper of general circulation qualified under chapter 493, and requires that the date,
80 time, and place for submission of bids be stated in the advertisement or solicitation for bids
81 and provides for informing bidders of the date, time, and place bids will be opened. Such
82 established local construction procurement policy shall also state any requirements for
83 prequalification of bidders. If any additional project-specific qualifications are
84 established, such qualifications shall be stated to potential bidders in advance of
85 submission of bids. The established local construction procurement policy shall also state
86 the bid award standard to be used in selecting contractors to perform contracts under the
87 policy.

88 (3) No political subdivision shall establish or maintain a local construction
89 procurement policy that provides for awarding one or more contracts for construction

without competitive bidding if the contract for construction equals or exceeds twenty-five thousand dollars. The dollar limitation established in this subdivision shall not apply to any political subdivision that has established a higher dollar amount requiring bidding of construction contracts that was established in a local construction procurement policy before January 1, 2011.

6. (1) All political subdivisions shall comply with the standard for administering competitive bidding established under this subsection.

(2) Unless specifically required by conditions of funding from the federal government or the requirement of a federal statute or regulation, no local construction procurement policy shall include provisions and no contract for construction shall be awarded by a political subdivision in violation of the following requirements:

(a) No bid shall be opened or contract awarded in advance of the advertised deadline for submission of bids or in a place other than that established in paragraph (b) of this subdivision;

(b) No bid shall be accepted unless it is sealed and is in writing. If the letting of the project for which bids were solicited is cancelled, bids shall be returned to the bidder unopened;

(c) No bid shall be accepted after the advertised deadline for acceptance of bids;

(d) All bids received shall be held secure and confidential from all persons until the bids are opened on the date and at the time and place established in this section. Bids shall be opened in public on the date and at the time and place stated in the advertisement and request for bids or in an amended request for bids. If the date, time, or place of bid opening is changed from information stated in the original or amended advertisement or solicitation for bids or other notice to bidders, notice of the date, time, and place of bid opening shall be made to the general public at least two business days in advance of the bid opening. Bids shall be opened in public;

(e) No construction contract shall be awarded in substantial violation of a state statute or a political subdivision's established local construction procurement policy;

(f) No construction contract shall be awarded in violation of section 107.170 requiring performance and payment bonds.

The political subdivision shall notify any person who has prequalified for the specific project or has registered and obtained plans and specifications from the political subdivision or the political subdivision's engineer for the specific project regarding any changes in the acceptance or opening of bids under this subsection.

125 **7. Nothing in this section shall be construed to prohibit acceptance and processing**
126 **of bids through an established program of electronic bidding by computer, provided bids**
127 **accepted and processed electronically shall meet standards established by the requirements**
128 **of the electronic bidding program which are comparable to requirements for written bids**
129 **established by this section.**

130 **8. Before or after a contract has been awarded, any person submitting a bid for a**
131 **contract for construction and any person denied the opportunity to fairly compete for**
132 **contract award due to violations of this section may file an action for any violation of**
133 **subsection 6 of this section or sections 34.203 to 34.216, and shall have standing to seek**
134 **injunctive relief, attorney's fees, and costs in a court of competent jurisdiction for**
135 **violations of subsection 6 of this section or sections 34.203 to 34.216 as provided by this**
136 **subsection. If the court determines upon substantial evidence there have been violations**
137 **of subsection 6 of this section, the court may order a contract to be rebid or, if a contract**
138 **has been awarded, order that the award be set aside and order a contract to be rebid. The**
139 **court may award reasonable attorney's fees upon a finding of violation.**

140 **9. An unintentional failure to meet one or more publication dates for newspaper**
141 **advertising or other requirements to inform potential bidders shall not constitute a**
142 **violation of subsection 6 of this section where a court finds that bids for the construction**
143 **contract were advertised in a newspaper of general circulation and were fairly solicited in**
144 **substantial compliance with subsection 4 or 5 of this section, and finds that the contract**
145 **was awarded through competitive bidding.**

146 **10. (1) Within three days after the filing of an action under subsection 8 of this**
147 **section, the clerk of the court shall issue a summons under applicable state law and**
148 **applicable local or supreme court rules. A copy of the petition shall be personally served**
149 **upon the defendant by personal process server as provided by law or by any sheriff. Such**
150 **service shall be served at the earliest time and shall take priority over service in other civil**
151 **actions.**

152 **(2) Final disposition of an action under subsection 8 of this section shall take place**
153 **not more than forty-five days after the service of such petition, unless waived by the parties**
154 **or for good cause shown. Final disposition shall not include appellate review.**

155 **(3) Except as provided in subdivision (4) of this subsection, any action under**
156 **subsection 8 of this section that is brought by the contractor more than fifteen days after**
157 **the award of a contract shall be dismissed by the court. The computation of time periods**
158 **herein prescribed shall be per Missouri Supreme Court Rule 44.01(a).**

159 **(4) If the court finds there has been fraud, collusion, or corruption in the award of**
160 **a contract, an action brought by a person under subsection 8 of this section shall not be**

subject to the time limitation set forth in subdivision (3) of this subsection. In the event that the court finds fraud, collusion, or corruption in the award of a contract, then, in addition to the remedies set out in subsection 8 of this section, the court may order monetary damages or equitable relief for all injured parties as it deems appropriate.

(5) If the court finds there is no substantial cause for the action brought under this section and determines that the action was brought for purposes of harassment or disruption of the awarded contract, the court may order the claimant to pay the political subdivision's cost of attorney's fees. Upon a finding under this subdivision, the court may also award monetary damages resulting from delays in the project.

(6) Any action under subsection 8 of this section shall be heard by a court sitting without a jury and subject to review only per the standards set out in *Murphy v. Carron*, 536 S.W. 30 (Mo. Banc 1976). If more than one contractor submitting bids on a contract brings an action under subsection 8 of this section, the court shall adjudicate the actions jointly under the time limits established under subdivision (2) of this subsection.

11. Nothing in this section shall be construed to prohibit a political subdivision from rejecting any individual bid or any and all bids. Neither shall anything in this section prohibit a political subdivision from awarding contracts without competitive bidding when the political subdivision deems it necessary to remove an immediate danger to the public health or safety, to prevent loss to public or private property which requires government action, or to prevent an interruption of or to restore an essential public service.

12. Nothing in this section shall be construed to prohibit a political subdivision from adopting an established local construction procurement policy governing contracts for construction after the effective date of this section. Neither shall this section be construed to allow a political subdivision to maintain or enact any provision governing construction contracts in conflict with subsection 6 of this section or any state statute in effect on the effective date of this section or as subsequently amended or enacted.

13. No political subdivision shall divide a project into component labor or material allocations for the purpose of avoiding bidding or advertising provisions of this section.

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